



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 20, 1961

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-1165

Re: Method of computing for
inheritance tax purposes
the present value of a
\$10,000.00 bequest to be
received by Culver Military
Academy after the children
of testator reach the age
of 25 years.

Dear Mr. Calvert:

We quote the following excerpts from your letter requesting an opinion from this office on the above captioned matter.

"Harry A. Raider, Jr., died testate a resident of Bexar County on May 16, 1959, and under his will, the deceased created two trusts out of his entire estate. His wife was devised a life estate in the first trust with the remainder upon her death or remarriage to Trust Number Two. The corpus of Trust Number Two passes to the two children in fee when they reach the age of 25 years, subject to a \$10,000.00 bequest to Culver Military Academy. The corpus of either trust cannot be invaded for any purpose until the children reach the age of 25 years. Therefore, Culver Military Academy is guaranteed the \$10,000.00 in cash.

"Since Culver Military Academy is a corporate or educational entity, we do not believe life expectancy and discount tables apply in discounting this bequest to the Academy. Please advise whether or not we should apply any kind of discount table to the bequest to the Culver Military Academy, because this bequest is postponed for a period of years, which in this case is 23 years."

It is to be noted that under the terms of the will the \$10,000.00 bequest to Culver Military Academy is to come out of the corpus of a trust, the use and benefit of which is

given to the children of the testator until said children reach the age of 25 years.

Article 14.01, 20-A, Taxation-General, Vernon's Annotated Texas Statutes reads in part as follows:

"All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein . . . which shall pass absolutely or in trust by will . . . shall, upon passing to or for the use of any person, corporation, or association, be subject to a tax for the benefit of the State's General Revenue Fund . . ."

Article 14.08, 20-A, Taxation-General, Vernon's Annotated Texas Statutes provides as follows:

"If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, accordingly to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the 'Actuaries Combined Experience Tables,' at four per cent compound interest." Emphasis added.

Under the terms of the will, the property passing (\$10,000.00) is divided into the following two estates or interests:

- 1) For years - to the children of the testator, the use and benefit of said \$10,000.00 until they reach the age of 25 years.
- 2) Remainder - to Culver Military Academy, said \$10,000.00 after the children of the testator reach the age of 25 years.

Article 14.08, supra, makes no distinction between corporate and natural beneficiaries. Therefore, the value of the interest of the children of the testator in said \$10,000.00 should first be determined pursuant to the provisions of Article 14.08 above. The value of the interest of the children should then be deducted from said \$10,000.00 in order to determine the present value of the remainder interest of Culver Military Academy. Upon this value the tax should be assessed. By using this method of computation, the entire present value of the

Honorable Robert S. Calvert, page 3 (WW-1165)

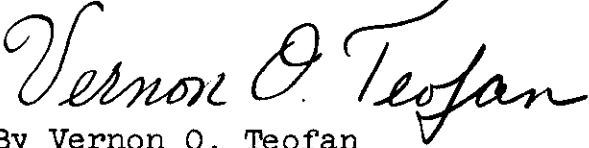
property passing will be taxed and double taxation avoided.

S U M M A R Y

In computing for inheritance tax purposes the present value of the \$10,000.00 bequest to be received by Culver Military Academy after the children of the testator reach the age of 25 years, the value of the interest of the children of the testator in said \$10,000.00 computed under Article 14.08, 20-A, Taxation-General, Vernon's Annotated Texas Statutes, should be deducted from said \$10,000.00 bequest.

Yours very truly,

WILL WILSON
Attorney General of Texas


By Vernon O. Teofan
Assistant

VOT:jln

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Norman Suarez
Bob Shannon

REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.